Office - Supreme Court, U.S.
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Supreme Court of the United States

October Term, 1955

No. 612

WILLIAM HILLIARD CLAYPOOLE,

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

PETITION FOR WRIT OF CERTIORARI

POWELL & DAVIS
110 High Street
Mount Holly, New Jersey
Attorneys of Petitioner.

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Supreme Court of the United States

October Term, 1955

WILLIAM HILLIARD CLAYPOOLE

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of William Hilliard Claypoole, of 214 Rutland Avenue, in the Township of Mount Holly, County of Burlington and State of New Jersey, respectfully shows:

A.

The only opinion delivered by either of the courts below in this matter was delivered by the United States Court of Appeals for the Third Circuit. It has not at the time of the preparation of this petition been either officially or unofficially reported.

B.

This petition is filed invoking the appellate jurisdiction of this Court under Article III, Section 2 of the Constitution of the United States, as implemented by an Act of Congress of June 25, 1948, Chapter 646, 62 Stat. 928 28 U. S. C. A. 1254), to review the final judgment of the United States Court of Appeals for the Third Circuit affirming a judgment of conviction for violations of certain of the postal laws of the United States entered in the United States District Court for the District of New Jersey on November 9, 1954.

i.

The judgment sought to be reviewed was entered by the United States Court of Appeals for the Third Circuit on December 7, 1955, and bears that date.

ii.

No order respecting a re-hearing or granting an extension of time within which to petition for certiorari has been entered.

iii.

Your petitioner believes that the jurisdiction of this Court to review the judgment in question by writ of certiorari is founded upon the Act of Congress of June 25, 1948, Chapter 646, 62 Stat. 928 (28 U. S. C. A. 1254 ((1))).

C.

The questions presented for review are:

Whether the United States Court of Appeals for the Third Circuit erred in refusing to grant a new trial to the petitioner because

1. The learned trial judge in the United States District Court for the District of New Jersey charged the jury (in Part) as follows:

> "Mere proof of good character does not entitle the defendant to a verdict of acquittal, but it is equally true that evidence of good character, when considered along with all of the other evidence in the case, may be the factor which creates the reasonable doubt which entitles a defendant to an acquittal by a jury. The very object of introducing character evidence is to raise in the minds of the jury a reasonable doubt as to the defendant's guilt."

2. Because the learned trial judge refused to charge as requested by the petitioner, as follows:

> "You have before you the testimony of a number of witnesses that the defendant has a good reputation for honesty and integrity. I charge you that this evidence alone may create in your minds a reasonable doubt as to the defendant's guilt. If it does, you must find him not guilty."

D.

This case involves no constitutional provisions, treaties, statutes, ordinances or regulations.

E.

Grand juries impaneled by the United States District Court for the District of New Jersey returned two indictments against the petitioner, the first (254-53) contained four counts, on the fourth of which he was acquitted at the the direction of the court. The first three counts charged him with embezzlement of postal revenues of the United States in violation of an Act of Congress of June 25,

1948, Chapter 645, 62 Stat. 780 (18 U. S. C. A. 1711) and with mutilating and concealing records of the Mount Holly Post Office of which petitioner was Postmaster in violation of an Act of Congress of June 25, 1948, Chapter 645, 62 Stat. 795 (18 U. S. C. A. 2071). A jury in the United States District Court for the District of New Jersey returned a verdict of guilty on these three counts of the indictment as well as upon Counts 1, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Second Indictment (90-54). The counts of the second indictment upon which the petitioner was convicted charged him with making false and ficticious entries in his postal and stamp accounts, with intent to deceive, mislead, injure and defraud in violation of an Act of Congress of June 25, 1948, Chapter 645, 62 Stat. 795 (18 U. S. C. A. 2073); with embezzlement of postal funds in violation of an Act of Congress of June 25, 1948, Chapter 645, 62 Stat. 780 (18 U. S. C. A. 1711); with the willful and unlawful concealment of postal records in violation of an Act of Congress of June 25, 1948, Chapter 645, 62 Stat. 795 (18 U. S. C. A. 2071) and with knowingly and willfully falsifying and concealing the fact of a shortage in his postmaster's account in violation of an Act of Congress of June 25, 1948, Chapter 645, 62 Stat. 749 (18 U. S. C. A. 1001). The case for the United States consisted in large part of circumstantial evidence. Postal inspectors testified and produced records showing when stamp stock had been received at the Mount Holly, New Jersey, Post Office. They attempted to work mathematically from times on which the inventory of the petitioner's office was said to have been known to them and by the use of the records of stamp stock received at different times and by the use of the petitioner's records arrived at the conclusion that the petitioner had falsified records and that he had a shortage in his stamp stock although there was never any attempt made to prove that when cash on hand or in the official

depositories of the petitioner were considered that the Government had suffered the loss of not a single cent of money. The petitioner took the stand in his own defense and denied the embezzlement of any money or property of the Government. He denies any knowledge of any shortage of any money or stock and he denied concealment of any records except on one or two occasions as to which he testified that the concealment was without any evil intent or motive on his part. As a matter of fact, at the end of the entire case the undisputed testimony was that the post office accounts of the Mount Holly Post Office were at the time of the trial $800.00 out of balance, and that the $800.00 was an overage and not a shortage. The petitioner produced in his defense 20 or more witnesses who, under oath, vouched for his having a good reputation for honesty and integrity. These included the then President of the County Bar Association, the Minister of the local Methodist Church, the Surrogate and Deputy Surrogate of Burlington County, an Assistant Cashier of the Union National Bank and Trust Company at Mount Holly, several businessmen, housewives and postal employees, the former Township Clerk of Mount Holly Township, the County Clerk of the County who had been previously Sheriff and Under-Sheriff of the County, the Chief of Police of Mount Holly, the Principal of the Mount Holly Schools, the President of the Chamber of Commerce and a former member of the governing body of Mount Holly Township. As the learned trial judge observed in his charge to the jury,

> "The whole fabric of the law that I told you about has an essential character of fraud upon the government involved in it."

Since the honesty and integrity of the petitioner was at issue and because his reputation for honesty and integrity had been placed in issue, counsel for the petitioner believed that the jury ought to be told what they could do

with this evidence. He accordingly requested the Court to charge:

> "You have before you the testimony of a number of witnesses that the defendant has a good reputation for honesty and integrity. I charge you that this evidence alone may create in your minds a reasonable doubt as to the defendant's guilt. If it does, you must find him not guilty."

The learned judge declined to give the charge as requested and instead said, to the jury,

> "In telling to you these general rules that will govern you in your deliberation, I also call to your attention the fact that the defense offered character testimony; some 20 or more witnesses were brought here to tell you of the reputation of the accused.
>
> "Mere proof of good character does not entitle the defendant to a verdict of acquittal, but it is equally true that evidence of good character when considered along with all of the other evidence in the case, may be the factor which creates the reasonable doubt which entitled a defendant to an acquittal by a jury. The very object of introducing character evidence is to raise in the minds of the jury a reasonable doubt as to the defendant's guilt."

With these instructions, in so far as the good reputation of the petition was concerned, the jury convicted the petitioner and he was sentenced to serve one year and one day in a federal penitentiary on each count of each indictment, the sentences to run concurrently.

An appeal was taken to the United States Court of Appeals for the Third Circuit where the instruction given by the trial court and the refusal of the trial court to charge as requested were briefed and argued as errors. The United States Court of Appeals for the Third Circuit

affirmed the judgment of conviction. Its judgment is challenged in this Court.

G.

The proceedings in the court of first instance were based upon indictments, each of which in turn was in all of its parts founded upon acts allegedly committed against the United States postal system which are made criminal by an Act of Congress. Jurisdiction over these matters was vested in the United States District Court for the District of New Jersey by an Act of Congress of June 25, 1948, Chapter 645, 62 Stat. 826 (18 U. S. C. A. 3231). An appeal was taken from the judgment of the United States District Court for the District of New Jersey to the United States Court of Appeals for the Third Circuit which had jurisdiction under an Act of Congress of June 25, 1948, Chapter 646, 62 Stat. 929 (28 U. S. C. A. 1291).

H.

This Honorable Court considered the matter of evidence given by character witnesses, the weight to be given to such testimony and the propriety of a charge given in respect thereto in *Edgington v. United States*, 164 U. S. 361 (1896). In that case, the trial court charged as follows:

> "Some testimony has been given you touching the good character of the defendant. When a man is charged with crime the courts of the United States permit this question of good character to be introduced to go to the jury. The theory, as I view it, is a wise one. If a man, in the community where he lives, by his incoming and outgoing among his neighbors, has built up in the years of his life, be they comparatively few or many, a character among them for good

morals, which includes the uprightness and excellency of our general citizenship, it is right that the jury should know that fact. It is of value to them in conflicting cases in determining points in the case; and yet, gentlemen, I have to say to you that evidence of good character is no defence against crime actually proven. If the defendant in this case is proven guilty of crime charged, any good character borne by him in his community is no defence; it must not change your verdict, for the experience of mankind, of all of us, teaches us that men reputed to be of good moral character in a community unfortunately sometimes we find they are sadly different from that which they are reputed to be, and that they are committers of crime; yet the good character goes to the jury with special force wherever the commission of the crime is doubtful. If your mind hesitates on any point as to the guilt of this defendant, then you have the right and should consider the testimony given as to his good character, and it becomes, as I have suggested, or may be of great importance in the minds of the jury in the matters of doubt."

This Court held that that charge contained error in that it conveyed to the jury the idea that evidence of good character could only be considered if the rest of the evidence created a doubt of defendant's guilt.

Immediately thereafter, Mr. Justice Shiras wrote the following often quoted paragraph:

"Whatever may have been said in some of the earlier cases, to the effect that evidence of the good character of the defendant is not to be considered unless the other evidence leaves the mind in doubt, the decided weight of authority now is that good character, when considered in connection with the other evidence in the case, may generate a reasonable

> doubt. The circumstances may be such that an established reputation for good character if it is relevant to the issue would alone create a reasonable doubt, although without it the other evidence would be convincing."

In *Michaelson v. United States,* 335 U. S. 469, 476, 69 S. Ct. 213, 219, the rule pronounced by Mr. Justice Shiras was reiterated and *Edgington v. United States, supra,* was cited with approval by Mr. Justice Jackson who wrote the opinion of this Court.

In *Snidkin v. United States,* 265 Fed. 489 (CCA 7, 1920), the trial judge was asked to charge the jury as follows:

> "You have heard evidence of the standing and reputation of this defendant, Leonard Snidkin, for good character. This reputation alone may create a reasonable doubt of this defendant's guilt, in your minds, and is proper for you to consider."

The charge as requested was refused, the trial judge charged some of the language quoted from the trial judge in the *Edgington* case. The Circuit Court of Appeals for the Seventh Circuit in an opinion by Judge Baker, held that the trial court committed error in that it placed the evidence respecting good reputation on the same basis as the evidence relating to the substantive acts charged in the indictment, and directed the jury to give it such weight as they might think it entitled to without furnishing them the legal scales in which to weigh it, namely, that a reputation for good character, if established, alone may create a reasonable doubt, although without it the other evidence would be convincing of guilt. Judge Evans dissented but apparently on other points.

The petitioner requested the Court to charge:

> "You have before you the testimony of a number of witnesses that the defendant has a good reputation for honesty and integrity. I charge you that this evidence alone may create in your minds a reasonable doubt as to the defendant's guilt. If it does, you must find him not guilty."

We urge upon this Court that that request was sufficiently similar to the requested charge in the *Snidkin* case, that it ought to have been given by the learned trial judge. As Judge Baker said, it "furnished the scales in which to weigh" the character evidence which had been offered by the petitioner.

In *Miller v. United States,* 120 Fed. 2d 968 (CCA 10, 1941), the Circuit Court of Appeals for the Tenth Circuit held that an instruction given by a trial judge to a jury which did not tell the jury that character testimony might be such that it alone might create a reasonable doubt, although without it the other evidence would be convincing, was too narrowly drawn and was error.

On the authority of *Edgington v. United States,* 164 U. S. 361; *Michaelson v. United States,* 335 U. S. 469, 69 S. Ct. 213; *Snidkin v. United States,* 265 Fed. 289 and *Miller v. United States,* 120 Fed. 2d 968, we believe that the petitioner was entitled to have the charge requested by him given to the jury by the trial judge as a part of the law of the case. The concluding paragraph of the opinion of the United States Court of Appeals indicates that the court considered the petitioner's point and found it without merit. The cases cited herein and relied upon by the petitioner sufficiently indicate the merit of the charge as requested and since the court below did not find any error in the refusal of the trial judge to give this charge, we assume the learned Court of Appeals was of the opinion that the matter had been sufficiently covered by the charge actually given by the learned trial judge in the following language:

"Mere proof of character does not entitle the defendant to a of acquittal, but it is equally true that evidegood character, when considered along with ıe other evidence in the case, may be the fach creates the reasonable doubt which entitles dant to an acquittal by a jury. The very objecroducing character evidence is to raise in the of the jury a reasonable doubt as to the defendilt."

Petitioner urges us Court that the charge actually given by the tria did not cover the point in appropriate language ıt the charge as given was actually prejudicial.

The case againstetitioner was, as we have said, largely circumstantinature. The trial judge recognized that fact and d a substantial part of his charge to instructions on se and value of circumstantial evidence. Each of rimes with which the petitioner was charged involved, deceit, concealment, embezzlement and dishone Therefore the integrity and honesty of the petitiond his reputation for these traits was material and ctent evidence. It was also important evidence be the defendant had categorically denied the commi of the crimes and also any corrupt intent, purpose otive on his part and his reputation for honesty and grity in the community in which he lived attested to it was, by outstanding citizens and officials of the unity, contributed to the evidence of the petitioner that ht have engendered a reasonable doubt of his guilt ie minds of the jury had the jury properly understood importance to which they might attach to such testiy. It was the purpose of counsel for the petitioner to e the court declare as a matter of law the importance the jury might attach to this testimony and thereby m it an effective instrument in the petitioner's defense providing "the scales in which

such testimony might be weighed". Instead the learned trial judge opened the paragraph of his charge on good character testimony with the words,

"Mere proof of good character".

The use of the word "mere" tended at the very threshhold of the instruction to have the jury understand that the proof of good character was not a matter of importance in the case but was something that made very little difference to what their decision should be. The opening clause of the Court's instruction on this subject was likewise harmful, for the jury was told,

"Mere proof of good character does not entitle the defendant to a verdict of acquittal,"

The law as pronounced by this Court in the *Edgington* and *Michaelson* cases, as pronounced in the *Snidkin* and *Miller* cases and as pronounced by the United States Court of Appeals for the Third Circuit in *United States v. Schaerman,* 150 Fed. 2d 941 (1945), clearly indicate that this is not an accurate statement of the law. While it is true that proof of good character standing alone does not as a matter of law entitle a defendant to an acquittal, it is at the same time true that if the jury believes the evidence that the defendant does have a good reputation in respect to the character traits which the criminal trial places in issue, that testimony alone may raise a reasonable doubt in the minds of the jury, if they care to give it that weight, and under those circumstances, would entitle a defendant to a verdict of acquittal.

Neither do we think that the second clause of the Court's charge tells the jury what the petitioner was entitled to have the jury know, namely, that the character testimony standing alone might be sufficient to engender in the minds of the jury a reasonable doubt of petitioner's guilt. The Court told the jury that evidence of good

character when considered along with all of the other evidence in the case might be the factor which created the reasonable doubt leading to acquittal. While undoubtedly it is the duty of the jury to consider all of the testimony in the case and while it is true that testimony of good character be sufficient to raise a reasonable doubt of guilt in the mind of the jury, the sum total of these two propositions does not amount to a conclusion that all of the evidence being considered together testimony concerning good repute may be the factor which creates the reasonable doubt in the mind of the jury. As we conceive it, the jury is under a duty to consider all of the evidence in the case including that of good repute. They are then entitled to ask themselves if the character testimony standing alone in a given case has such weight as of itself to raise a reasonable doubt of guilt in their minds.

Although the trial judge appears to have lifted his charge on good character from the opinion of the United States Court of Appeals for the Third Circuit in *United States v. Quick*, 128 Fed. 2d 832, 836 (1942), we do not believe that the language was appropriate as a charge to a jury nor did it tell the jury what the petitioner had a right for them to know under the circumstances of this case. Jurors are not versed in legal terminology and the language of a judicial opinion is generally not appropriate for use in a charge. *Lisonski v. United States*, 31 Fed. 2d 846, 852 (CCA 4, 1929), certiorari denied 279 U. S. 873, 49 S. Ct. 514; *People v. Rutigliano*, 261 N. Y. 103, 184 N. E. 689, 690 (CA, 1933).

We respectfully submit that in the field of the character evidence the learned trial judge erred not only in refusing the petitioner's request by employing the charge that he did and that the learned United States Court of Appeals for the Third Circuit was also in error in affirming this judgment.

I.

There is appended to this petition a
of the United States Court of Appeal
cuit in this matter.
n a copy of the opinion
eals for the Third Cir-

J.

There is appended hereto a copy o
United States Court of Appeals for th
is sought to be reviewed.
of the judgment of the
the Third Circuit which

PRAYER FOR REL

Wherefore, your petitioner respe**LIEF**
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Hilliard Claypoole, No. 11,604; t
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and your petitioner will ever pray.
rther relief in the prem-
y seem just and proper;

POWELL A
110 High Str
Mount Holly
Attorneys of
ND DAVIS
treet
, New Jersey
f Petitioner.

Dated: December 30, 1955

STATE OF NEW JERSEY)
COUNTY OF BURLINGTON) SS.

JAMES M. DAVIS, JR., of full age, being duly sworn according to law, on his oath deposes and says:

I am a member of the Bar of the Supreme Court of the United States and I am the attorney who actually conducted the prosecution of the appeal referred to in the foregoing petition on behalf of William Hilliard Claypoole. I aver that I have read the foregoing petition and that the allegations of fact therein contained are true.

JAMES M. DAVIS, JR.

Sworn to and subscribed
before me this 30th day
of December, 1955.

EVELYNE E. RIDGWAY
Notary Public of New Jersey

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 11,604

UNITED STATES OF AMERICA,

v.

WILLIAM HILLIARD CLAYPOOLE,
Appellant.

Appeal From the United States District Court For The District of New Jersey

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Argued November 14, 1955

Before Biggs, Chief Judge, and Kalodner and Hastie, Circuit Judges

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OPINION OF THE COURT
(Filed December 7, 1955)

Per Curiam.

The defendant, a postmaster, was prosecuted under two indictments. The first was filed July 14, 1953 and consisted of four counts. The second was filed March 2, 1954 and contained twenty counts. The two cases were consolidated for trial. The jury found the defendant guilty on counts 1, 2 and 3 of the first indictment and on counts 1, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the second indictment. The defendant was sentenced to a year and a day on each count of both indictments on which he was found guilty, all sentences to run concurrently.

There is no doubt that the defendant's written statement plus his own testimony was sufficient to sustain his conviction on count 3 of the first indictment, charging a violation of 18 USC Sec. 2071(b), because of the concealment of an invoice for return-card stamped envelopes. It is equally clear from the record that there was ample evidence to support the defendant's conviction on count 4 of the second indictment, charging a violation of 18 USC Sec. 1711, because of his failure to enter a shipment of ½¢ stamps in his accounts until the following quarter. Since the sentences imposed on these two counts of both indictments are to run concurrently with all the other sentences imposed, it is unnecessary to consider any questions raised in connection with the other counts. Hirabayashi v. United States, 320 U. S. 81, 85, 105 (1943); Brooks v. United States, 267 U. S. 432, 441 (1925); Marteney v. United States, 218 F. 2d 258, 261 (10 Cir. 1954).

We have examined all points raised by the defendant, including the sufficiency of the court's charge as to the evidence relative to the defendant's good reputation and the effect of the exculpatory language in the statement made by the defendant. We can perceive no error. Accordingly, the judgment of the court below will be affirmed.

A true Copy:

Teste:

Clerk of the United States Court of
Appeals for the Third Circuit.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 11,604

UNITED STATES OF AMERICA

vs

WILLIAM HILLIARD CLAYPOOLE,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Present: BIGGS, Chief Judge and
KALODNER and HASTIE, Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

December 7, 1955

Attest:
IDA O. CRESKOFF
Clerk

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 612

WILLIAM HILLIARD CLAYPOOLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 1a-2a) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 7, 1955 (Pet. 3a). The petition for a writ of certiorari was filed on January 6, 1956. The jurisdiction of this Court in invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the trial court gave proper instructions on the weight to be given to character evidence.

STATEMENT

Petitioner was convicted by a jury in the District Court for the District of New Jersey under two indictments for the following offenses committed while he was the postmaster of the Mount Holly Post Office:—embezzlement of postal revenues (18 U.S.C. 1711); mutilation and concealment of records (18 U.S.C. 2071(b)); the making of false entries in his postal and stamp accounts (18 U.S.C. 2073); and the falsification and concealment of the fact of a shortage in his postmaster's account (18 U.S.C. 1001) (R. I 6a-18a).[1] He received a concurrent sentence of one year and one day on each count of the two indictments (R. I 2a, 4a). On appeal, the conviction was affirmed *per curiam* (Pet. 1a-2a).

The government's case consisted mainly of the testimony of postal inspectors who had conducted a series of investigations of petitioner's postal accounts and found shortages (R. I 19a-28a, 32a-34a, 40a-41a, 106a-109a, 139a-154a, R. II 3b-17b, 19b-32b). Petitioner admitted his failure to make entries in his postal accounts as charged in several counts but denied that this was done with intent to deceive (R. I 110a-112a). Petitioner took the

[1] The record in this Court consists of Appellant's Appendix, which will be referred to herein as "R.I," and Appellee's Appendix, which will be referred to herein as "R.II."

stand to explain his version of the transactions (R. I 213a-220a, 227a-268a), and introduced some twenty character witnesses, who vouched for his good reputation for honesty and integrity (R. I 220a-222a).

At the close of the evidence, the counsel for petitioner requested the court to give the jury the following charge (Pet. 6):

> You have before you the testimony of a number of witnesses that the defendant has a good reputation for honesty and integrity. I charge you that this evidence alone may create in your minds a reasonable doubt as to the defendant's guilt. If it does, you must find him not guilty.

Instead the court gave the following charge (R. I 311a-312a):

> In telling to you these general rules that will govern you in your deliberation, I also call to your attention the fact that the defense offered character testimony; some twenty or more witnesses were brought here to tell you of the reputation of the accused.
>
> Mere proof of good character does not entitle the defendant to a verdict of acquittal, but it is equally true that evidence of good character, when considered along with all of the other evidence in the case, may be the factor which creates the reasonable doubt which entitles a defendant to an acquittal by a jury. The very object of introducing character evi-

dence is to raise in the minds of the jury a reasonable doubt as to th[e] defendant's guilt.

Defense counsel entered a[n] objection to this portion of the charge (R. I [3]20a-321a).

ARGUM[ENT]

Petitioner's sole conte[n]tion before this Court (Pet. 7-13) is that the cha[rge] of the district judge relative to the considerat[ion] to be given evidence of good character by th[e] jury did not meet the criterion established in *Edgington* v. *United States*, 164 U.S. 361, 366. The trial court in *Edgington* had instructed the jury to consider evidence of good character only if they were in doubt as to the guilt of the defendant. 164 U.S. at 364-365. This Court held that such an instruction was erroneous and set forth what has become the guiding rule for instructions on evidence of good character (164 U. S. at 366):

> Whatever may have been said in some of the earlier cases, to the effect that evidence of the good character of the defendant is not to be considered unless the other evidence leaves the mind in doubt, the decided weight of authority now is that good character, when considered in connection with the other evidence in the case, may generate a reasonable doubt. The circumstances may be such that an established reputation for good character, if it is relevant to the issue would alone create a reasonable doubt, although without it the other evidence would be convincing.

The charge as given by the trial judge in this case (*supra*, pp. 3-4) follows the law as outlined in the *Edgington* case.[2] The fact that the district judge said the evidence of good character might be "*the* factor which creates the reasonable doubt" (R. I 312a, emphasis added), requiring a verdict of acquittal, was in effect the same as telling the jury that evidence of good character alone might create the reasonable doubt. It was in accord with the *Edgington* case, 164 U. S. at p. 366, to instruct the jury that evidence of good character was to be considered along with the other evidence in the case.

Petitioner contends that the instant charge is similar to those held erroneous in *Miller* v. *United States*, 120 F. 2d 968, 971-972 (C. A. 10) and *Snitkin* v. *United States*, 265 Fed 489, 491-492 (C.A. 7). A comparison of the three charges, however, shows that the one involved here does not contain the faults found in the other two. The *Snitkin* charge told the jury to give the evidence of good character only "* * * such weight as you think it is entitled to * * *". 265 Fed. at 492. The Seventh Circuit held that such a charge did not furnish the jury the legal scales by which to weigh the evidence of good character "* * * namely, that a reputation for good character, if established, alone may create a reasonable doubt, although without it the other evidence would be convincing of guilt." 265 Fed. at 492.

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[2] It exactly parallels the language of the Third Circuit in *United States* v. *Quick*, 128 F. 2d 832, 836.

The *Miller* charge [3] was held erroneous in that it was confusing and did not tell the jury that evidence of good character alone may be such as to create a reasonable doubt. 120 F. 2d at 971-973.[4]

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[3] The charge in *Miller* v. *United States*, 120 F. 2d at 971 was:

"* * * 'Evidence has been introduced to show the good character of the defendants. Evidence of a defendant's good character or previous good character is competent evidence in favor of the party accused as tending to show that he would not be likely to commit the crime charged against him, and in this case, if the jury believe from the evidence that prior to the commission of the crime, the defendants or any of them had always borne a good character or reputation for being law-abiding among his acquaintances in the neighborhood in which he lives, *this then is a fact proper to be considered by the jury with all of the other evidence in the case in determining the question whether or not the witness who testified to the facts tending to incriminate him might have been mistaken or testified falsely or truthfully*, and if after careful consideration of all the evidence in the case, including that bearing upon the defendant's previous good character, the jury entertain a reasonable doubt of the defendant's guilt, then it is your duty to acquit; but if after considering all the evidence including that of the previous good character, you believe beyond a reasonable doubt that the defendant or defendants committed the crime, it is equally your sworn duty to convict.' (Italics supplied)."

[4] The holding of the Tenth Circuit as to the above charge in *Miller* v. *United States*, 120 F. 2d at 971-972, was:

"* * * The instruction is drawn too narrowly. It does not tell the jury that character testimony may be such that it alone may create a reasonable doubt, although without it the other evidence would be convincing. Edgington v. United States, 164 U.S. 361, 366, 17 S. Ct. 72, 41 L. Ed. 467. The instruction in one part told the jury that if, after a consideration of all the evidence, including that of good character, the jury entertained a reasonable doubt, then they should acquit. However, in another part of the instruction it limited the consideration of the character testimony to a determination whether the prosecuting witnesses committed perjury or were

The instant charge in its entirety correctly follows this Court's decision in *Edgington* v. *United States*, 164 U.S. 361, 366.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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mistaken. From a reading of the whole instruction the jury may have concluded that if they believed from all of the evidence, including that of previous good character which was offered only to show that the witnesses testifying for the prosecution were mistaken or testified falsely, then they should acquit. This clearly would be erroneous. It is not sufficient that an instruction be so drawn that a jury may reach the right conclusion, but it is required that it be so framed that a jury may not draw the wrong conclusion therefrom."

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